IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5720 OF 2007

Raj Park II Co.Op. Hsg. Society Ltd... ....Petitioner
V/s
Mrs.Alka G. Suryavanshi & Anr..... ....Respondents.

N.R.Bubna, Adv. For the petitioner.

R.S.Latnekar, Adv. For the respondent.

CORAM: A.P.DESHPANDE, J.
14/9/07

PC:

The present petitioner is a housing society who is defendant in a suit filed by plaintiff. Along with suit the respondent-plaintiff filed an application for temporary injunction. The petitioner was served with the suit summons on 24.11.05. The petitioner filed a reply to the temporary injunction application on 9.12.05. The Exh.5 application for temporary injunction came to be decided on 7.8.06. It transpired that the petitioner has not filed written statement hence immediately a pursis was filed on the same date i.e. 15.9.06 that the reply to Ex.5 be treated as written statement. Rejection of the said request has given rise to the present writ petition. At later point of time the petitioner also filed an application seeking permission to file written statement. That application came to be rejected by an order dated 15.11.06 and aggrieved thereby the petitioner carried revision before the cooperative appellate Court. The Revisional Court has rejected the revision and thereafter this petitioner came to be filed challenging both the orders. The Courts below have taken too pedantic an approach in considering the prayer made by the petitioner to treat the reply to Ex.5 as written statement. The petitioner

was not seeking any permission for filing of written statement but had only prayed for treating the reply as written statement. It is on account of very technical approach adopted by the courts below the said prayer has been construed as prayer seeking permission to file written statement after period prescribed has expired under order 8 rule 1. Infact reply filed on record was prayed to be treated as written statement. The learned counsel for the petitioner is making only a limited prayer and he is not seeking any further order to permit him to file written statement. Expressly the learned counsel gives up his right to file written statement and is satisfied if the reply to temporary injunction application is treated as written statement. In this view of the matter I am of the clear view that the denying the request to treat reply to Ex.5 as written statement would result in miscarriage of justice, besides causing hardship and inconvenience to the petitioner which is society. Granting the request for treating the reply to Ex.5 as written statement will not cause any prejudice to the defendant. The fact remains that the trial has not been delayed on account of non filing of written statement. Granting of limited prayer for treating the reply as written statement would advance cause of justice. Hence in the interest of justice writ petition is allowed. The impugned order passed by Cooperative Court dated 15.9.06 is quashed and set aside. Prayer made by the petitioner in the pursis filed on 15.9.06 for treating the reply to Ex.5 as written statement is granted. The reply to Ex.5 shall be treated as written statement. In this view of the matter challenge to the order dated 15.11.06 passed by the Cooperative Court and the revisional order dated 20.4.07 passed by the Cooperative Appellate Court is not pressed in service. Hence said prayer stands rejected. Rule made absolute in above terms with no order as to costs.

14.9.07